Costs Decision

Site visit made on 11 February 2025

by R Catchpole BSc (Hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2025

Costs Application in Relation to Appeal Ref: APP/G2435/W/24/3348375 at White Gables, Lower Moor Road, Coleorton, Coalville LE67 8FL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by North West Leicestershire District Council for an award of costs against Mr Darren Betteridge.
- The appeal was against the refusal of an outline planning permission.

Decision

1. The application for an award of costs is dismissed.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.

3. The applicant believes that Mr Betteridge acted unreasonably because he failed to submit a Landscape and Visual Impact Assessment (LVIA) that was requested during the course of his planning application which was subsequently submitted at the appeal stage. The applicant alleges that this was contrary to the Wheatcroft Principles, as set out in Bernard Wheatcroft Ltd v SSE [JPL 1982 P37], because it altered the scope of the scheme and could not be regarded as a minor amendment.

4. The applicant also finds this inconsistent with Planning Inspectorate advice which states that that if an amendment to a proposal is likely to overcome a reason for refusal, then this should normally form the basis for a new application and that the appeal process should not be used to evolve a scheme. The principle being that what is considered at the appeal stage should essentially be what was considered at the application stage.

5. I have dealt with the first matter in my decision and my findings are set out as follows:

> In Bernard Wheatcroft Ltd v SSE [1982] JPL 37, the High Court considered the issue of amendments in the context of conditions and established that "*the main, but not the only, criterion on which… judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who*

should have been consulted on the changed development of the opportunity of such consultation". I note that the scheme has not been changed and the Council has also had an opportunity to comment on this new evidence. I do not consequently find it contrary to the Wheatcroft judgement, when read as a whole, or the principles of natural justice.

6. Not only did I find that the underlying proposal remained the same, but I did not find that the new evidence overcame the third reason for refusal. I found harm to the designated heritage asset which was one of the grounds upon which the appeal was dismissed. Patently, the additional information did not justify a new application. Moreover, the information did not amend the proposal, it simply provided additional information which helped me come to a decision rather than evolve the scheme into something else.

7. Notwithstanding the above, the PPG sets out the types of behaviour that may lead to an award of costs against appeal parties. The submission of this evidence risks an award of costs on procedural grounds because Mr Betteridge only supplied relevant information at appeal when it was requested, but not provided, at the application stage. Moreover, it is alleged that Mr Betteridge introduced fresh and substantial evidence at a late stage which led to extra expense for preparatory work that would not otherwise have arisen. Mr Betteridge believes that there was sufficient information in order for the applicant and its consultees to reach a conclusion regarding the visual impact of the proposal and that there would have been further opportunities to approve appropriate mitigation through reserved matters.

8. Whilst I accept that the Heritage Statements (HS) contained visual information, the applicant was within its rights to request whatever information it required to determine the application. I also viewed the HS but found the LVIA added to my understanding due to the well-established and systematic approach that it followed. However, this matter turns on whether or not the applicant required this information to inform its decision-making and whether this was submitted in a timely manner. In this respect, the Officer Report clearly states that there was a lack of evidence in the form of an LVIA which meant that it was unable to rule out harm to the designated heritage asset.

9. One of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. Despite the views of the Garden's Trust or Historic England, this should have benefitted the applicant's decision making and Mr Betteridge should have complied. I therefore find the failure to submit the LVIA at the application stage to be unreasonable.

10. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process.

11. The applicant maintains that additional officer time was required to review and assess the LVIA at the appeal stage when this should have been evaluated at the application stage. As this document would have required the same amount of time

to evaluate, irrespective of which stage it was submitted, I do not find that it led to unnecessary or wasted expense as the same quanta of officer time was simply deployed at a later stage in the process.

Conclusion

12. I conclude that whilst Mr Betteridge acted unreasonably on the matters set out above, this did not lead to unnecessary or wasted expense. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

R Catchpole

INSPECTOR